Yeo Yoo Teik v Jemaah Pengadilan Sewa, Pulau Pinang & Anor

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO P-01-19-95
SITI NORMA YAAKOB, VC GEORGE JJCA AND AHMAD FAIRUZ J
27 NOVEMBER 1995

Civil Procedure *— Appeal — Record of appeal — Filing of — Delay — Request of extension of time to file record of appeal — Appellant failed to file request within a week of filing notice of appeal in compliance with Practice Direction 2/91 — Whether fatal*

The appellant filed his notice of appeal on 16 February 1995. On 16 March 1995, ie one month after the notice was filed, his solicitor made an application for an extension of time to file the record of appeal to the Court of Appeal. However, pursuant to Practice Direction 2/91, the request for extension should have been made to the registrar within a week of the filing of the notice of appeal. The reason given by the appellant for the delay was that a new clerk had taken over the conduct of the file on 16 March 1995, and it was then discovered that Practice Direction 2/91 had not been complied with.

Held, dismissing the application:

(1) Practice Direction 2/91 has been especially framed to regulate the procedure governing the filing of appeal records. Although it does not have the force of law, it must be strictly adhered to so that there is a systematic and consistent procedure governing the filing of appeal records in this court (see p 56C).

(2) The granting or dismissal of an application for extension of time is very much a discretionary matter. In this instance, the court would not exercise its discretion in favour of the appellant as the omission on the part of a solicitor to be vigilant could hardly be described as an acceptable explanation for the delay (see p 56D).

(3) Further, counsel had also failed to allude to some facts or law in his affidavit-in-support of the application for the extension of time so as to show at least an arguable case (see p 56E).

(4) The failure to do so coupled with the delay for which no acceptable explanation had been given, left the court with no choice but to dismiss the application with costs (see p 56F).

[Bahasa Malaysia summary

Perayu memfailkan notis rayuan pada 16 Februari 1995. Pada 16 Mac 1995, iaitu sebulan selepas notis tersebut telah difailkan, peguamcaranya telah membuat suatu permohonan untuk perlanjutan masa bagi memfailkan rekod rayuan kepada Mahkamah Rayuan. Walau bagaimanapun, mengikut Arahan Amalan 2/91, permintaan untuk perlanjutan masa harus dibuat kepada pendaftar dalam tempoh

masa seminggu selepas notis rayuan difailkan. Sebab yang diberikan oleh perayu terhadap kelewatan tersebut ialah bahawa seorang kerani baru telah mengambil alih pelaksanaan fail pada 16 Mac 1995, dan pada masa itulah ia telah didapati bahawa Arahan Amalan 2/91 tidak dipatuhi.

Diputuskan, menolak permohonan:

(1) Arahan Amalan telahpun dibuat khususnya untuk mengawal prosedur ynag menguasai pemfailan rekod rayuan. Walaupun ia tidak mempunyai kuatkuasa undang-undang, ia mesti dipatuhi dengan ketat supaya terdapat suatu prosedur pemfailan rekod rayuan yang sistematik dan konsisten dalam mahkamah ini (lihat ms 56C).

(2) Pemberian atau penolakan suatu permohonan untuk perlanjutan masa adalah suatu perkara yang amat bergantung kepada budi bicara mahkamah. Dalam kes ini, mahkamah tidak akan melaksanakan budi bicaranya dengan memihak kepada perayu kerana ketiadaan sikap sentiasa berjaga-jaga pada seorang peguamcara tidak boleh dikatakan sebagai suatu penjelasan yang boleh diterima (lihat ms 56D).

(3) Selanjutnya, peguam juga telah gagal untuk menyentuh tentang sedikit fakta atau undang-undang dalam afidavit sokongan permohonan untuk perlanjutan masa untuk menunjukkan sekurang-kurangnya terdapat suatu kes yang dapat dibicarakan (lihat ms 56E).

(4) Kegagalan untuk berbuat demikian bersama-sama dengan kelewatan tanpa penjelasan yang boleh diterima, meninggalkan mahkamah dengan tidak ada pilihan kecuali untuk menolak permohonan dengan kos (lihat ms 56F).]

Notes

For cases on records of appeal, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 624–636.

Appeal from: Originating Summons No 25–61–91 (High Court, Pulau Pinang)

Tan Kah Hoo (Gan Teik Chee & Co) for the appellant.
See Liang Teik (Lim Huck Aik & Co) for the respondent.

Cur Adv Vult

Siti Norma Yaakob JCA (delivering the judgment of the court): In this application for an extension of time to file the record of appeal, the affidavit-in-support affirmed by the applicant's solicitor states that the applicant had failed to obtain such an extension from the Registrar of this Court, as Practice Direction 2/91 had not been complied with. That

Practice Direction provides that a request for such an extension must be made to the Registrar within a week of the filing of the notice of appeal. A

The applicant filed his notice of appeal on 16 February 1995 and the request for extension should have been made on or before 23 February 1995. This was not done. The applicant's solicitors only made such a request on 16 March 1995, a month after the notice was filed. The only reason given for the delay is that a new clerk had taken over the conduct of the file on 16 March 1995, and it was then discovered that no request for extension had been made under Practice Direction 2/91. A written request was immediately faxed to the Registry the same day. B

Practice Direction 2/91 has been especially framed to regulate the procedure governing the filing of appeal records. Although it does not have the force of law, nonetheless it must be strictly adhered to so that there is a systematic and consistent procedure governing the filing of appeal records in this court. C

The granting or dismissal of an application for extension of time is very much a discretionary matter, but in this instance we were loathe to exercise our discretion in favour of the applicant, particularly as no reasonable and acceptable explanation had been given for the four weeks delay. The omission on the part of a solicitor to be vigilant can hardly be described as an acceptable explanation. D

We also took note of the fact that the affidavit-in-support makes no mention of the factual circumstances surrounding the cause of action leading to the order appealed against. It was only before us that counsel attempted to remedy the deficiency of his affidavit by offering to state that the appeal arose out of a Rent Tribunal matter, for which prohibition had not been granted. It would have assisted us if counsel had at least alluded to some facts or law in his affidavit so as to show at least an arguable case. The failure to do so coupled with the delay of four weeks for which no acceptable explanation had been given, left us with no choice but to dismiss the application with costs. E F

Application dismissed. G

Reported by Isabel Liong

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